

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Hon. Joyce L. Kennard, Chair
Heather Anderson, Senior Attorney, 415-865-7691

DATE: September 27, 2005

SUBJECT: Appellate Procedure: Notice of Settlement (amend Cal. Rules of Court, rule 20) (Action Required)

Issue Statement

Under rule 20 of the California Rules of Court, if a civil case settles after a notice of appeal has been filed, the appellant must immediately serve and file a notice of settlement in the Court of Appeal. The notice of settlement advises the court that additional work on the appeal may not be necessary. Currently, however, some appellants do not follow up the notice of settlement by timely filing either an abandonment or a request to dismiss the appeal. Until an abandonment or a request to dismiss is filed, the appeal remains on the court's docket without a final disposition.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2006, amend rule 20 to:

1. Clarify that a notice of settlement must be filed by the settling appellant if a civil case settles either as a whole or as to any party;
2. Require that an appellant who has filed a notice of settlement file either an abandonment or a request to dismiss the appeal within 45 days;
3. Authorize the court to dismiss the appeal as to that appellant if the appellant does not file an abandonment, a request to dismiss, or a letter stating good cause not to dismiss the appeal within the required time period; and

4. Clarify that the notice of settlement requirement does not apply to appeals in which the parties are seeking the court's approval of a settlement involving a stipulated reversal of a trial court decision.

The text of the amended rule is attached at pages 4–5.

Rationale for Recommendation

To ensure that appeals do not remain in limbo on the court's docket after the filing of a notice of settlement, the Appellate Advisory Committee recommends that rule 20 be amended to require that the appellant file an abandonment or a request to dismiss within 45 days after filing a notice of settlement, unless the court has ordered a longer time period on a showing of good cause. The 45-day period is designed to give the appellant an opportunity to take any steps necessary to finalize the settlement, such as memorializing an oral settlement agreement in writing or paying an agreed upon settlement amount. In addition, the court would be specifically authorized to dismiss the appeal if the appellant does not file an abandonment, a request to dismiss, or a letter stating good cause not to dismiss the appeal within the required time period.

To avoid confusion, the Appellate Advisory Committee also recommends that new section (a)(4) be added to clarify that the notice of settlement requirement does not apply to appeals in which the parties are seeking the court's approval of a settlement involving a stipulated reversal of a trial court decision. This approval must be sought through a motion procedure that results in an order containing statutorily required findings. In these stipulated reversal proceedings the court would address settlement when it considers the required motion. The notice of settlement requirement of section 20 is therefore not necessary in these cases.

Alternative Actions Considered

The committee considered requiring petitioners to file an abandonment or a request to dismiss immediately after filing the notice of settlement or within a shorter, 30-day period. The committee ultimately opted to recommend that the appellant be given 45 days to file the abandonment or request to dismiss. The committee believes that giving parties some time to implement their settlement agreements before they are required to file the abandonment or request to dismiss is important and the 45 days is the same amount of time currently given to litigants at the trial court level to file a dismissal after filing a notice of settlement.

Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2005 comment cycle. Seven individuals and organizations submitted comments on the proposal. Four commentators agreed with the proposal, and three agreed with the proposal only if it is modified.

The invitation to comment specifically solicited comments about whether the requirement for a notice of settlement should apply only when the entire case is settled or should also apply when there are partial settlements. Two commentators —the California Appellate Court

Clerks' Association and the State Bar of California's Committee on Appellate Courts—responded. Both of these organizations recommended that the notice of settlement requirement not be limited to circumstances in which the entire case is settled, noting that it is also helpful for the court to know when there is a partial settlement. The committee agrees with these comments and is therefore proposing to add a provision to subdivision (1) clarifying that a notice of settlement must be filed either when the case as a whole is settled or when it is settled as to any party.

The State Bar of California's Committee on Appellate Courts suggested, however, that if the notice of settlement requirement is to apply when there are partial settlements, the application of the requirements for filing an abandonment or a request to dismiss should be clarified. The committee agreed with this suggestion and has modified its proposal to clarify that it is the appellant who files the notice of settlement who must file an abandonment or request to dismiss. The State Bar committee also suggested that a comment be added to provide examples of circumstances that constitute good cause for a court to give an appellant more than 45 days to file the abandonment or request to dismiss. The Advisory committee believed that the rule was sufficiently clear and that a comment was therefore unnecessary.

Justice Turner, Presiding Justice of the Second Appellate District, Division Five, noted that under rule 27, when an appeal is dismissed, the respondent is considered the prevailing party and is normally entitled to recover costs on appeal. He suggested that the proposal be modified to clarify that if the court dismisses an appeal because an appellant does not file the abandonment or request to dismiss within the required 45-day period, each party should be required to bear its own costs. The committee agreed with this suggestion and modified its proposal accordingly.

The California Appellate Court Clerks' Association suggested that appellants should be given 30, rather than 45, days within which to file an abandonment or a request to dismiss. As discussed above, the committee considered this suggestion but ultimately decided to recommend the 45-day period. The Clerks' Association also noted that rule 20 has not been applied to stipulated reversals and therefore suggested that the proposed new section clarifying that rule 20 is not applicable to such settlements is not necessary. The committee considered this suggestion but concluded that clarifying the rule's application would help prevent future confusion.

A chart of the comments and the committee's responses is attached at pages 6–11.

Implementation Requirements and Costs

By reducing the necessity to individually follow up on cases in which no abandonment or request to dismiss has been filed following the filing of a notice of settlement, these amendments should result in some lowered in costs for the Courts of Appeal.

Attachments

Rule 20 is amended, effective January 1, 2006, to read:

1 **Rule 20. Settlement, abandonment, voluntary dismissal, and compromise**

2
3 **(a) Notice of settlement**

- 4
- 5 (1) If a civil case settles after a notice of appeal has been filed, either as a
6 whole or as to any party, the appellant who has settled must
7 immediately serve and file a notice of settlement in the Court of Appeal.
8 If the parties have designated a clerk's or a reporter's transcript and the
9 record has not been filed in the Court of Appeal, the appellant must also
10 immediately serve a copy of the notice on the superior court clerk.
11
- 12 (2) If the case settles after the appellant receives a notice setting oral
13 argument or a prehearing conference, the appellant must also
14 immediately notify the Court of Appeal of the settlement by telephone
15 or other expeditious method.
16
- 17 (3) Within 45 days after filing a notice of settlement—unless the court has
18 ordered a longer time period on a showing of good cause—the appellant
19 who filed the notice of settlement must file either an abandonment under
20 (b), if the record has not yet been filed in the Court of Appeal or a
21 request to dismiss under (c), if the record has already been filed in the
22 Court of Appeal.
23
- 24 (4) If the appellant does not file an abandonment, a request to dismiss, or a
25 letter stating good cause why the appeal should not be dismissed within
26 the time period specified under (3), the court may dismiss the appeal as
27 to that appellant and order each side to bear its own costs on appeal.
28
- 29 (5) This subdivision does not apply to settlements requiring findings to be
30 made by the Court of Appeal under Code of Civil Procedure section
31 128(a)(8).
32

33 **(b) Abandonment**

- 34
- 35 (1) Before the record is filed in the Court of Appeal, the appellant may
36 serve and file in superior court an abandonment of the appeal or a
37 stipulation to abandon the appeal. The filing effects a dismissal of the
38 appeal and restores the superior court's jurisdiction.
39
- 40 (2) The superior court clerk must promptly notify the Court of Appeal and
41 the parties of the abandonment or stipulation.
42

1 **(c) Request to dismiss**
2

3 (1) After the record is filed in the Court of Appeal, the appellant may serve
4 and file in that court a request or a stipulation to dismiss the appeal.

5
6 (2) On receipt of a request or stipulation to dismiss, the court may dismiss
7 the appeal and direct immediate issuance of the remittitur.
8

9 **(d) Approval of compromise**
10

11 If a guardian or conservator seeks approval of a proposed compromise of a
12 pending appeal, the Court of Appeal may, before ruling on the compromise,
13 direct the trial court to determine whether the compromise is in the minor's
14 or the conservatee's best interest and to report its findings.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Saul Bercovitch Committee on Appellate Courts, State Bar of California San Francisco	AM	Y	<p>The Appellate Advisory Committee has proposed amendments to rule 20 of the California Rules of Court that would require an appellant who has filed a notice of settlement to file either an abandonment or a request to dismiss an appeal within 45 days from the notice of settlement. The Committee supports the Appellate Advisory Committee’s proposed amendment to rule 20, subject to the additional recommendation below.</p> <p>The Committee believes that since good cause for an extension of the 45 days is not defined in the rule, the comment following the rule should clarify that settlements that by their nature reasonably require more than 45 days for implementation, such as where payments are made on a long-term schedule, or property needs to be sold to implement a settlement, for example, ought to constitute good cause for an extension of the 45-day period. The inclusion of these examples in the comment would set some guidance in the meaning of the standard “good cause” as applied to this particular rule.</p> <p>The Appellate Advisory Committee is also seeking comment on whether rule 20, as amended, should be further amended so that it expressly applies only when the entire case is settled. The Committee believes that even if a case is only partially settled, the Court of Appeal should at least be apprised of that</p>	<p>The committee believes that the rule is sufficiently clear and therefore a comment is not needed.</p> <p>Agree. The committee has revised its proposal to clarify that a notice of settlement must be filed by the settling appellant either when the case as a whole settles or when it settles as to any party. The proposal has also been modified to</p>

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				settlement as it goes about its review process to avoid needless work being performed on issues or matters that are no longer involved in the larger case remaining on appeal. If, however, the rule were to require that notice of a partial settlement be given, the rule would need to make clear that the requirement for the follow-up abandonment or request to dismiss would not apply in the event of a partial settlement.	clarify that the requirements for filing the abandonment or request to dismiss and the authorization for the court to dismiss the appeal apply only to the appellant who filed the notice of settlement.
2.	Hon. Roger W. Boren Administrative Presiding Justice Court of Appeal, Second Appellate District Los Angeles	A	N	Agree with proposed changes.	No response needed.
3.	Ms. Deena C. Fawcett President California Appellate Court Clerks' Association Sacramento	AM	Y	CACCA agrees with the proposed changes only if modified as follows. 1. CACCA recommends that the time to file either an abandonment or a request for dismissal be reduced to 30 days instead of 45 days. In the majority of cases, an abandonment is filed within 30 days. To extend the time to 45 days will lead to further delay.	The committee believes that the 45-day period is reasonable and will not inordinately delay dismissal. This is the same period given to litigants at the trial court level to file a dismissal after filing a notice of settlement. If insufficient time is provided, the court will be faced with more requests for individualized timeframes or requests to extend the timeframe.

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				<p>2. Section (4) of 20(a) is not necessary as the current rule has not been interpreted to apply to cases in which a stipulated reversal is filed.</p> <p>3. CACCA does not agree with the proposal that rule 20 should be amended to make its provisions applicable only when the entire case settles. When partial settlements are reached and partial abandonments are filed, it is very helpful to clarify early on the specific parties involved on appeal.</p>	<p>Although rule 20 has not, to date, been interpreted to apply to stipulated reversals, the Committee still believes it is helpful to clarify this issue.</p> <p>Agree. The committee has revised its proposal to clarify that a notice of settlement must be filed either when the case as a whole settles or when it settles as to many party.</p>
4.	Ms. Linda Gorham Court Manager Superior Court of San Francisco County San Francisco	A	N	Agree with proposed changes.	No response needed.
5.	Mr. Stephen V. Love Executive Officer Superior Court of San Diego County San Diego	A	N	Agree with proposed changes. No additional comments.	No response needed.
6.	Hon. Paul Turner Presiding Justice Court of Appeal, Second Appellate District Los Angeles	AM	N	Proposed California Rules of Court, rule 20(a)(3) permits the Court of Appeal to dismiss an appeal 46 days after the filing of a settlement notice. Most cases on appeal are litigated by lawyers who are unfamiliar with the effect of a	Agree. The proposal has been modified to specify that the order of dismissal will provide that each party is to bear its own costs.

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				<p>dismissal. Pursuant to California Rules of Court, rule 27(a)(2), in the case of a dismissal, the respondent, as the prevailing party, would normally recover its costs. So if there is a dismissal resulting from the passage of the 45 days specified in proposed California Rules of Court, rule 20(a)(3), the respondent can then seek to recover its costs on appeal which may include a statutory or contractual attorney fee right.</p> <p>Several times a month, I receive an appellant’s dismissal request and then must send out a request that the parties clarify whether each side is to bear its own costs and attorney fees on appeal. This is because most lawyers are unaware of the cost imposition consequences of California Rules of Court, rule 27(a)(2).</p> <p>I suggest that proposed California Rules of Court, rule 20(a)(3) be amended to insert in the last sentence after the second use of the word “appeal” the words “with each side to bear its own costs and attorney fees on appeal.” This will be consistent with the fact the parties claim there is a settlement. Further, if the settlement is consummated, the parties can simply let the 45-day time period lapse, and they will know the cost and attorney fee allocation that will result.</p>	

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7.	Mr. Dean Zipser President Orange County Bar Association Irvine	A	Y	Agree with proposed changes.	No response needed.